

REMARKS

Claims 1, 3-5, 7-24 and 26-34 were pending in the application.

Claims 1, 3-5, 7-24 and 26-34 have been rejected.

Claims 1, 5, 7, 10-11, 13, 15-18, 20-22, 24 and 27-28 were amended herein. The amendments are supported at least by Figure 7 and paragraph [0077] of the Specification and introduce no new matter.

Claims 1, 3-5, 7-24 and 26-34 remain pending in this application.

Reconsideration of the claims is respectfully requested.

I. CLAIM REJECTIONS – 35 U.S.C. § 101

Claims 24 and 26-31 were rejected under 35 U.S.C. 101 as directed to non-statutory subject matter.

The Office Action notes that Claims 24 and 26-31 require a computer program embodied on a computer readable medium, which stores a program. The Office Action asserts that the specification does not set forth what constitutes a computer readable medium, and therefore, in view of the ordinary and customary meaning of computer readable media and in accordance with the broadest reasonable interpretation of the claim, said medium could be directed towards a transitory propagating signal *per se* and considered to the non-statutory subject matter. This rejection is respectfully traversed.

Claim 24 has been amended to recite a computer program embodied on a non-transitory computer readable medium. The Applicant respectfully submits that, as amended, under no reasonable interpretation of the claim, could the recited medium be directed towards a transitory

propagating signal *per se*. Accordingly, the Applicant respectfully requests that the Examiner withdraw the rejection under § 101.

II. CLAIM REJECTIONS -- 35 U.S.C. § 103

Claims 1, 3-5, 7-10, 13-18, 20-22, 24, 26-28, 30-31 and 34 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,154,730 to *Adams, et al.* (hereinafter “Adams”) in view of Christianitytoday.com, in further view of U.S. Patent Publication No. 2003/0233267 to *Hertzel-Szabadi* (hereinafter “Hertzel-Szabadi”), in view of U.S. Patent No. 6,446,053 to *Elliot* (hereinafter “Elliot”), still in further view of Churchgrowthsoftware.com, still in further view of U.S. Patent Publication No. 2002/0147623 to *Rifaat* (hereinafter “Rifaat”). Claims 11, 19, 23 and 29 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Adams in view of Christianitytoday.com in further view of Hertzel-Szabadi, further in view of Elliot, still in further view of Churchgrowthsoftware.com, still in further view Rifaat as applied to claims 1, 15, 22 and 24 above, and further in view of U.S. Patent Publication No. 2002/0099725 to *Gordon*, (hereinafter “Gordon”), still in further view of U.S. Patent No. 6,859,768 to *Wakelam* (hereinafter “Wakelam”). Claims 12, 32 and 33 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Adams in view of Christianitytoday.com in further view of Hertzel-Szabadi, further in view of Elliot, still in further view of Churchgrowthsoftware.com, still in further view Rifaat as applied to claims 1, 15, 22 and 24 above, and still in further in view of “How Much Can They Give.” The Applicant respectfully traverses the rejections.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142, p. 2100-133 (8th ed. rev. 4, October 2005). Absent such a *prima facie* case, the applicant is under no obligation to produce evidence of

nonobviousness. *Id.* To establish a *prima facie* case of obviousness, three basic criteria must be met: *Id.* First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *Id.* Second, there must be a reasonable expectation of success. *Id.* Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *Id.* The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *Id.*

Claim 1 recites a method that includes generating a schedule of construction projects. The schedule includes a plurality of phases and any construction project may be performed in any phase. Generating the schedule includes receiving from a user, for each construction project, an identification of a phase during which the construction project is to be performed. The Applicant respectfully submits that the cited references do not describe such a method.

In rejecting Claim 1, the Office Action asserts that Elliott describes in Figure 2C, step 128, a system in which a construction proposal may be revised by receiving from a user an indication of a phase and step whose options will be revised (in step 108 and 110). Further, the Office Action asserts that in column 10, lines 6-10, Elliott describes, where a project is a remodel, rather than a project from the ground up, the user can select a starting phase and step from which the remodel can begin.

Elliott provides a system to assist an unsophisticated home owner or builder in managing a project to build or remodel a home. *See Elliott, col. 1, lines 7-25.* The system guides the unsophisticated builder through a complete, preset series of construction phases and steps required for building a home. *See Elliott, col. 6, lines 5-14.* Where the project is to remodel a home, the

system prompts the builder to select the appropriate phase and step for the remodel; for example, where the remodel is to recarpet a bedroom, the builder is prompted to select a phase and step relating to floor covering.

Thus, the system of Elliott allocates different parts of a project to different phases and steps of the project. If the remodel is to change a wall treatment (for example from sheetrock to paneling), the builder is prompted to select a phase and step related to wall treatments. If the remodel is to change a floor treatment (for example from carpet to hardwood), the builder is prompted to select a phase and step related to floor treatments.

Elliott describes allowing its builder to revise the options for a step, or perform only some of the phases and steps of a project, but does not allow, for example, a floor treatment step to be performed during a wall treatment phase, or *vice versa*. The user is not permitted to identify to the system a phase of the project in which a step is to occur. The system of Elliott makes that determination and does not allow the user to change the step to a different phase.

In contrast, Claim 1 recites a method in which a schedule comprising a plurality of phases is generated for a plurality of construction projects, where any construction project may be performed in any phase of the schedule. Furthermore, generation of the schedule includes receiving from a user an identification of which phase each construction project is to be performed in. As such, in the recited method, any one or more construction projects may be performed in a first phase of the schedule, any other construction projects may be performed in a second phase of the schedule, and so forth. Elliott does not describe such a method, and Adams, Hertzel-Szabadi, Churchgrowthsoftware.com, Rifaat, Wakelam, and “How Much Can They Give” do nothing to overcome the shortcomings of Elliott.

For at least these reasons, Claim 1 and its dependent claims are patentable over the cited references. Amended independent Claims 15, 22 and 24 recite limitations analogous to the novel and non-obvious limitations emphasized in traversing the rejection of Claim 1 and, therefore, Claims 15, 22, 24 and their dependent claims also are patentable over the cited references. Accordingly, the Applicant respectfully requests that the Examiner withdraw the § 103 rejection with respect to these claims.

CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at wmunck@munckcarter.com.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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